



**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

APPEAL DECISION SUMMARY

APPEAL No: 2010-1745

DATE: August 23, 2010

OUTCOME: (check one)

 X SUSTAINED REVERSED REMANDED
 INVALID/FULL
 SUSTAINED and REMANDED
 REVERSED and REMANDED
 AGENCY ERROR/OTHER

ISSUE ON APPEAL: Eligibility – ABD –excess resources

GENERAL RULE OF LAW: Standards for resource eligibility

1. United States Code, 42 U.S.C. § 1396a(a)(17)(B) requires a state plan for medical assistance to include:

reasonable standards . . . for determining eligibility for and the extent of medical assistance under the plan which . . . (B) provide for taking into account only such income and resources as are . . . available to the applicant or recipient.

2. As a program based on need, Medicaid uses the value of a person's countable resources as one of two financial criteria in determining eligibility. The other criterion is income. Medicaid Manual, Volume XIII, M1110.001, A (p. 1).
3. Eligibility with respect to resources is a determination made for each calendar month, beginning with the third month prior to the month in which the application is received. Resource eligibility exists for the full month if countable resources were at or below the applicable resource limit for any part of the month. Medicaid Manual, Volume XIII, M1110.001, B, 1 (p. 1).
4. Resources are cash and any other personal or real property that an individual owns, or has the power to convert to cash and is not legally restricted from using for his support and maintenance. Medicaid Manual, Volume XIII, S1110.100, B, 1, (p. 3).
5. The eligibility worker must verify the value of all countable, non-excluded resources. Medicaid Manual, Volume XIII, M0130.200, H (p. 8).
6. A home means the house and lot used as the principal residence and all contiguous property, as long as the value of the land, exclusive of the lot occupied by the house, does not exceed

\$5,000. The home exclusion applies to land adjoining the home plot if not completely separated from it by land in which neither the individual nor his or her spouse has ownership interest. Easements and public rights of way (utility lines, roads, etc.) do not separate other land from the home plot. \$5,000 of assessed value of land contiguous to the home lot can be included in the home exclusion. Medicaid Manual, Volume XIII, S1130.100, A, 2, C, 1 (pp. 1-2).

7. The current market value (CMV) or fair market value (FMV) of a resource is 100% of the local tax assessed value. Equity value (EV) is the CMV of a resource minus any encumbrance on it. Medicaid Manual, Volume XIII, M1110.400, A, 1, a, b (p. 10).
8. Real property, including a life estate in real property created on or after August 28, 2008 but before February 24, 2009, that an individual has made reasonable but unsuccessful efforts to sell, will continue to be excluded for as long as:
 - the individual continues to make reasonable efforts to sell it; and
 - including the property as a countable resource would result in a determination of excess resources.

This exclusion is effective the first of the month in which the most recent application was filed or up to three months prior if retroactive coverage is required. Medicaid Manual, Volume XIII, S1130.140, A, 1 (p. 13).

9. A reasonable effort to sell is considered to have been made when at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at CMV (other reasons are not sufficient). Medicaid Manual, Volume XIII, S1130.140, B, 1, b (p. 13).
10. Property may be excluded retroactively when the property was listed for sale at the time of application. To receive the Reasonable Efforts to Sell exclusion for the month of application and the retroactive period when the property has already been listed, the property must have been listed at or below 150% of CMV. Medicaid Manual, Volume XIII, S1130.140, B, 2 (p. 14).
11. The value of any asset that meets the definition of a resource counts against the applicable resource limit, unless otherwise excluded. Medicaid Manual, Volume XIII, S1110.200 (p. 6).
12. The resource limit for one person in the Categorically Needy, Categorically Needy Non-Money Payment, and Medically Needy covered groups is \$2,000. The resource limit for the QMB covered group is \$6,600. Medicaid Manual, Volume XIII, M1110.003, B, 2, (p. 2).
13. An individual with countable resources in excess of the applicable limit is not eligible for Medicaid. Medicaid Manual, Volume XIII, M1110.003, B, 1 (p. 2).
14. The retroactive period is based on the month in which the application is filed with the agency. The retroactive period is the three months prior to the application month. Medicaid Manual, Volume XIII, M0130.100, C (p. 3).

15. There is no administrative finality on determining retroactive eligibility if eligibility for the months in the retroactive period has not been determined. Retroactive coverage can be requested at any time subsequent to an application even if the application was denied. The retroactive period is based on the application month regardless of whether the application was denied or approved. Medicaid Manual, Volume XIII, M0130.100, C (p. 3).
16. If the application was denied, the application is reopened for determination of eligibility in the entire retroactive period – all three months prior to the application month – even if a covered medical service was received in only one retroactive month. Medicaid Manual, Volume XIII, M0130.100, C (p. 3).

AGENCY DECISION: The hearing officer found in favor of the agency, based upon the following:

The Appellant was denied for Medicaid payment of LTC services during the retroactive period due to an uncompensated asset transfer. Subsequent to the denial, the local agency discovered other real property that had not been previously reported. The local agency reevaluated the retroactive period and determined that the Appellant was ineligible for all Medicaid services during the retroactive period due to excess resources instead of the previous reason.

APPLICABLE CITATIONS FOR ACTION:

United States Code

42 U.S.C. §1396a (a)(17)(B)

Medicaid Manual, Volume XIII

M0130.100, C (p. 3)

M0130.200, H (p. 8)

M1110.001, A, B, 1 (p. 1)

M1110.003, B, 1, 2, (p. 2)

M1110.100, B, 1, (p. 3)

S1110.200 (p. 6)

M1110.400, A, 1, a, b (p. 10)

M1130.100, A, 2, C, 1 (pp. 1-2)

M1130.140, A, 1 (p. 13)

M1130.140, B, 1, b, 2 (pp. 13-14)